



Remarks

Claims 1-6 were pending in this application. New claims 9-31 have been entered herein. Claims 7-8 have been withdrawn from consideration as drawn to a non-elected invention. The Examiner rejected claims 1-6 under 35 U.S.C. § 112, ¶ 2. Claims 1, 2, 4 and 6 were rejected under 35 U.S.C. § 102(b) as anticipated by PCT Application No. WO97/16155 ("the '155 application"). Claims 1, 2 and 4-6 were rejected under 35 U.S.C. § 103(a) as obvious over the '155 application. Claims 1-4 and 6 were rejected under 35 U.S.C. § 103(a) as obvious over the '155 application in view of U.S. Patent No. 4,749,563 to Georgalas. The Examiner also objected to the Preliminary Amendment of August 24, 2000 for adding a reference to drawings where none had been included. Finally, the Examiner objected to the application for failure to include an abstract.

Applicants have amended the specification and attached an abstract to address the Examiner's objections. Applicants respectfully submit that all pending claims are in condition for allowance.

Applicants' invention is directed to a gel comprising a high concentration of Dead Sea water (or similarly constituted water) in comparison to the prior art. None of the art discloses, teaches, motivates or suggests a composition having the concentration of Dead Sea water even approaching the values presented herein, and none has been able to use such concentrations to form a liquid gel. For example, the '155 application discloses a cream or lotion composition having similar ingredients as the present invention, but the '155 clearly fails to disclose the critical concentrations claimed herein, and it does not disclose those ingredients as part of a gel.

Moreover, it is apparent from the '155 application that the dominant ingredient (by percent w/w) of the present invention (*i.e.*, Dead Sea water or water similarly constituted) is not a necessary ingredient, since it is not even present in the majority of the examples presented in the '155 application and is the last listed ingredient in its presentation of additional possible additives to its lotions and creams. Most importantly, the '155 application does not disclose Dead Sea water as an ingredient in its gel.

Anticipation requires that each and every element of a claim be disclosed in a single reference. *See* MPEP § 2131. Where a specific range is claimed for a composition, and “no specific examples falling within the claimed range are disclosed,” the reference does not necessarily anticipate the claims. MPEP § 2131.03. Rather, the reference must disclose the claimed range with “sufficient specificity.” *Id.* Determining “sufficient specificity” is similar to determining whether a composition is “clearly envisaged” by a reference. *Id.* To so determine, one may look to the preferred embodiments in the reference to determine whether the reference “clearly envisages” the claimed composition. *See* MPEP § 2131.02.

In this case, the '155 application fails to anticipate any of independent claims for several reasons. First, it fails to disclose a gel composition comprising Dead Sea (or similarly constituted) water. Second, it does not disclose any range of concentration for the Dead Sea water, let alone a range having “sufficient specificity” to anticipate the present invention. In fact, every indication from the '155 application is that the amount of Dead Sea water in its composition is either minimal or unnecessary. Third, the ranges for the antioxidant claimed in claims 5, 27 and 28 are not shown in the '155 application at all. While claims 5, 27 and 28 claim

0.05% to 0.2% w/w antioxidant, the '155 application limits the amount of antioxidant (BHT in the '155 application) to 0.005% to 0.02% -- ten times less than the claimed ranges. For all of the above reasons, claims 1, 5, and 27-28 are not anticipated by the prior art.

Neither claim 1, 5 nor 27-28 is obvious in light of any of the prior art. Obviousness requires that each and every element of the claim be present in a combination of references along with a teaching, motivation and suggestion of success in combining them. *See* MPEP § 2143. The motivation to combine reference must be “clearly and particularly” taught in the references. *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). A modification to a reference that renders a reference unsatisfactory for its intended purpose is not obvious. *See* MPEP § 2143.01. Ranges encompassed in the prior art may nevertheless be non-obvious if the claimed ranges are critical to the invention. *See* MPEP § 2141.05, II.A. Finally, in determining obviousness, the Examiner “cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies.” *In re Sang Su Lee*, 277 F.3d 1338 (Fed. Cir. 2002).

None of the art cited by the Examiner discloses a gel composition comprising 30%-80% w/w Dead Sea or similarly constituted water. Concentrations of Dead Sea water used in the prior art are in the range of up to 0.2% w/w. The '155 application does not disclose any ranges for the Dead Sea water at all, and based upon the examples presented, does not even require Dead Sea water. Accordingly, there can be no “clear and particular” motivation to use those concentrations. Moreover, while Applicants need not establish that the concentration of Dead Sea (or similarly constituted) water is critical to the invention because there is no range disclosed

in the prior art, it is clear from Applicants' disclosure that the concentration of Dead Sea (or similarly constituted) water is the touchstone of the present invention. In addition, there is no teaching in the art to adapt the present composition to use as a gel.

In addition, claims 2 and 29-31 are neither anticipated nor obvious based upon the '155 application or any combination thereof. Specifically, a composition of 30%-80% Dead Sea (or similarly constituted) water with the levels of additives disclosed in the '155 application would result in "salting out" and dehydration – creating an opaque solution. One embodiment of the present invention, which is claimed in claims 2 and 29-31, is directed to a clear gel. There is no teaching or suggestion of success, and hence it would be non-obvious, to obtain a clear gel in light of the high concentration of Dead Sea water (or similarly constituted water) with its high TDS as used in the present invention. The clear gel of the present invention requires certain concentrations of additives, examples of which have been claimed herein and which are nowhere disclosed or suggested in the '155 application.

Because claims 1, 5 and 27-28 are patentable, claims 2-4, 6-26 and 29-31 are patentable as dependent from patentable base claims. *See* MPEP § 2143.03; *In re Fine*, 837 F.2d 1065 (Fed. Cir. 1988).

Applicant respectfully submits that the amendment herein demonstrates Applicant's preference for particular language and, notwithstanding anything to the contrary, are not intended to be amendments related to patentability. Furthermore, Applicant respectfully submits that the

amendments herein merely add language of equivalent scope, and that nothing herein is intended to narrow the scope of any of the claims.

A check in the amount of \$246.00 (\$84.00 for one independent claim in excess of three and \$162.00 for nine claims in excess of twenty) is enclosed herewith.

The Commissioner is hereby authorized to charge any additional fees (or credit any overpayment) associated with this communication to our Deposit Account No. 13-0019. If a fee is required for an extension of time under 37 C.F.R. §1.136 not accounted for above, such extension is requested and such fee should also be charged to our Deposit Account.

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Dated: March 19, 2002

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Daniel H. Shulman', written over a horizontal line.

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